IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

TR.C.M.P. No.21542 OF 2003
AND
Tr.CMP.No. 7575 OF 2004
AND
C.M.P.Nos.21543/2003 & 7576/2004.

Vasanthi .. Petitioner in Tr.CMP.No.
21542/2003 & respondent in
Tr.CMP.No.7575/2004.
-Vs-

S.Arumugam .. Respondent in TR.CMP.No.
21542/2003 & Petitioner in
Tr.CMP.No.7575/2004.

Transfer Civil Miscellaneous Petitions filed under Section 24 of the Civil Procedure Code for the reliefs as stated therein.

!For petitioner in
Tr.CMP.No.21542/2003
& Respondent in
Tr.CMP.No.7575/2004 : Mr.R.Gunasekaran

^For respondent in
Tr.CMP.No.21542/2003
& Petitioner in
Tr.CMP.No.7575/2004 : Mrs.Thenmozhi Shivaperumal

:COMMON ORDER
Tr.C.M.P.No.21542 of 2003 has been filed by the wife praying to direct withdrawal of H.M.O.P.No.127 of 2002 from the file of the court of Principal Subordinate Judge, Chengalpattu and transfer the same to the file of the Court of Subordinate Judge, Nagapattinam to be tried together with H.M.O.P.No.116 of 2003.

2. Tr.C.M.P.No.7575 of 2004 has been filed by the husband praying to withdraw H.M.O.P.No.116 of 2003 from the file of the Court of Subordinate Judge, Nagapattinam and transfer the same to the file of the Court of Subordinate Judge, Chengalpattu to be tried along with H.M.O. P.No.127 of 2002.

3. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that both the parties are wife and husband; that the husband filed a petition in H.M.O. P.No.127 of 2002 before the Court of Subordinate Judge, Chengalpattu for divorce and the wife filed a petition in H.M.O.P.No.116 of 2003 before the Court of Subordinate Judge, Nagapattinam for restitution of conjugal rights. When both the said proceedings are pending, the wife has come forward to file the above Tr.C.M.P.No.21542 of 2003 seeking transfer of the H.M.O.P. filed by the husband before the Court of Subordinate Judge, Chengalpattu to the file of the Court of Subordinate Judge, Nagapattinam on ground that after being thrown out of her matrimonial home by her husband, she took asylum with her parents at Nagapattinam along with her two children and that there is a threat to her life and also the lives of her children from her husband, if she has to appear before the Chengalpattu Court. She would also express her inability to spend for the travelling expenses.

4. On the contrary, the stand taken by the husband is that he is employed as Scientific Officer at the Atomic Research Centre, Kalpakkam and it is very difficult for him to get leave so as to appear before the Nagapattinam Court and that his wife being an unemployed, it would be easy for her to attend the Court at Chengalpattu.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is fully convinced of the reasons assigned on the part of the wife since she being a lady, making her travel from Nagapattinam to Chengalpattu often whenever the case gets posted is not an easy task and every insecurity prevails in making her journey, staying overnight, etc. Moreover, she is incapacitated to meet out the expenses for her travel. Therefore, it is only desirable to order the petition filed by the wife as prayed for.

6. At this juncture, it is worth mentioning the judgment of the Apex Court rendered in Sumita Singh v. Kumar Sanjay reported in AIR 2002 SC 396, wherein it is held:

"This is a transfer petition by the wife. She seeks the transfer of matrimonial proceedings filed by the husband against her in Ara, Bhojpur to Delhi. It is her case that she is now living and working in Delhi and that she would be unable to travel up and down from Delhi to Ara, a distance of about 1100 Kilometers from Delhi, to defend the matrimonial proceedings. She also states that she has no one with whom she can stay in Ara because her parents are residents of Gurgaon."

"Learned counsel for the husband states that the wife is an educated woman who is doing very well and can, therefore, travel to Ara while the husband is unemployed."

"It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute."

Therefore, it is clear that it is the convenience of the wife that must be given the utmost importance.

7. Considering the facts and circumstances and in view of the judgment of the Apex Court cited supra, Tr.C.M.P.No.21542 of 2003 filed by the wife is entitled to be allowed while the Tr.C.M.P.No.7575 of 200 4 filed by the husband is liable to be dismissed.

In result,
(i) Tr.C.M.P.No.21542 of 2003 is allowed.
(ii)Tr.C.M.P.No.7575 of 2004 is dismissed.
(iii) H.M.O.P.No.127 of 2002 pending on the file of the Court of Subordinate Judge, Chengalpattu is hereby ordered to be transferred to the file of the Court of Subordinate Judge, Nagapattinam so as to be tried along with H.M.O.P.No.116 of 2003.

However, in the circumstances of the cases, there shall be no order as to costs.

Consequently, C.M.P.No.21543 of 2003 is closed and C.M.P.No.7576 of 2004 is dismissed.

Index: Yes
Internet: Yes

Rao

To

1. The Subordinate Judge,
Chengalpattu.

2. The Subordinate Judge,
Nagapattinam.

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